

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

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**UNITED STATES OF AMERICA**

**v.**

**ROBIN SZELIGA,**

**Defendant.**

Criminal No.: 05-6-234-

**PLEA AGREEMENT AND STATEMENT OF FACTS  
RELEVANT TO SENTENCING**

The United States of America, by and through its undersigned attorneys for the United States Department of Justice ("Government"), and the defendant, ROBIN SZELIGA, personally and by counsel, submit the following Plea Agreement and Statement of Facts Relevant to Sentencing pursuant to D.C.COLO.LCrR 11.1.

**1. PLEA AGREEMENT**

- a. The defendant agrees to waive indictment and plead guilty to a Criminal Information charging her with one count of insider trading, in violation of 15 U.S.C. §§ 78j and 78ff and 17 C.F.R. § 240.10b-5.
- b. This plea is pursuant to Rule 11 (c)(1)(A), and the terms and conditions set forth herein constitute the complete and entire agreement between the parties. This agreement includes sentencing stipulations between the parties and potential departure(s) from the guideline range, but both parties understand that the ultimate

sentence imposed by the Court will be advised by the application of the advisory sentencing guidelines, as well as the factors listed in 18 U.S.C. § 3553(a).

- c. By entering into this Plea Agreement, the defendant admits that she is in fact guilty of the offense set forth in the Criminal Information.

**2. STATUTORY PENALTIES**

- a. The maximum statutory penalty for a violation of the offense herein to which the defendant ROBIN SZELIGA is pleading guilty is: ten (10) years imprisonment and a \$1,000,000.00 fine. There is no minimum statutory penalty.
- b. The conviction may cause the loss of civil rights, including but not limited to, the rights to possess firearms, vote, hold elected office, and sit on a jury.
- c. The maximum term of supervised release is 3 years (18 U.S.C. § 3583).
- d. The maximum statutory fine for the offense is \$1,000,000.00 (15 U.S.C. § 78ff).
- e. A violation of the conditions of probation or supervised release may result in a separate prison sentence.

**3. STIPULATION OF FACTUAL BASIS AND FACTS RELEVANT TO SENTENCING**

- a. The parties agree that there is no dispute as to the material elements which establish a factual basis for the offense of conviction.
- b. Pertinent facts are set out below in order to provide a factual basis for the plea and to provide facts which the parties believe are relevant, pursuant to United States Sentencing Guidelines ("U.S.S.G.") §1B1.3, for computing the appropriate guideline range. The parties further agree and understand that the Sentencing Guidelines are advisory, and that the Court is free to accept or reject the parties'

agreements and stipulations with regard to the appropriate sentence.

- c. The statement of facts herein is agreed to by the parties.
- d. The parties agree that the Government's evidence would show that the conduct constituting the offense (U.S.S.G. § 1B1.3) began on or about April 24, 2001 and ended on or about April 30, 2001.
- e. The elements of the insider trading offense are:
  - i. the defendant was an insider to his or her corporation;
  - ii. the defendant traded in the securities of the corporation on the basis of material, non-public information; and
  - iii. the defendant acted willfully.
- f. The parties agree that the Government's evidence would establish that, at all times relevant to the offense herein:
  - i. Qwest Communications International Inc. ("Qwest") was a Delaware corporation with its headquarters in Denver, Colorado. Qwest was a telecommunications company whose business included providing local and long distance voice and data services and construction of a national and international telecommunications network. Qwest stock was, and remains, publicly traded on the New York Stock Exchange under the symbol "Q." and its shareholders resided throughout the United States, including in the District of Colorado.
  - ii. Defendant ROBIN SZELIGA was officially named Qwest's Chief Financial Officer ("CFO") on April 18, 2001. She previously had been

employed by Qwest in a number of positions beginning in 1997. As an officer of Qwest, the defendant owed a duty of trust and loyalty to the company and its shareholders.

- iii. As CFO, the defendant's duties and responsibilities included, among other things, reviewing quarterly financial results for each of Qwest's business units, including their actual and projected performance; reviewing compiled financial information relating to Qwest; participating in preparation of earnings releases; participating in the preparation of internal scripts for conference calls with analysts, and participating in the conference calls; participating in providing guidance regarding the company's anticipated performance to the investing public; and participating in presenting the company's overall perspective on its business. In performing these duties and responsibilities, the defendant often worked with other senior executives, including the heads of Qwest's business units and the Investor Relations group, and reported to the Chief Executive Officer.
- iv. Defendant ROBIN SZELIGA knew that federal securities law prohibited, among other things, the purchase or sale of securities of any issuer of publicly traded securities on the basis of material non-public information.
- v. Defendant ROBIN SZELIGA also knew that Qwest had a written internal policy that prohibited directors, officers and employees from trading in Qwest securities based upon material, non-public information, i.e., "insider

trading.” Among other things, Qwest’s written internal policy, sent in a memo from the Chief Executive Officer, defined “material information” as “[i]nformation about [Qwest] that the average investor would want to know before deciding whether to buy, sell or hold [Qwest] securities (*i.e.*, information potentially affecting the market price of such securities).” The written policy also included non-exclusive examples of material information, including financial results; projections of future earnings or losses, which depart materially from market expectations based on prior disclosures; and significant developments or events with respect to products or services or marketing plans. The policy also defined nonpublic information as information that had “not been included in [Qwest’s] filings with the SEC or in a press release broadly disseminated to the public.”

- vi. During at least March and April 2001, Defendant ROBIN SZELIGA was in possession of material, non-public information regarding Qwest’s true and actual operating performance and financial condition, obtained through, among other sources, internal documents and conversations and meetings with other executives. Part of this non-public information included the quality, nature, source and growth of Qwest’s revenue, which information the defendant knew and believed was important to the investing public.
- vii. Defendant Robin Szeliga and certain senior Qwest executives knew, by at

least April 24, 2001, that the various Qwest business units were not going to meet their revenue targets and expectations for the first and second quarters of 2001 as portrayed to the investing public. The defendant and certain other senior Qwest executives further knew that Qwest was ultimately only able to meet its publicly announced 2001 first and second quarter earnings expectations through certain revenue sources which Qwest classified as "non-recurring" and which included indefeasible rights of use ("IRUs"). The defendant and certain other senior Qwest executives further knew the significant extent to which these so-called "non-recurring" revenue sources were used as publicly undisclosed "gap-fillers" so that Qwest could "make" its revenue targets and expectations during the first and second quarters of 2001. Consequently, the investing public was unable to assess the risk of an investment in Qwest securities.

- viii. Defendant ROBIN SZELIGA knew that the information that she and certain other senior Qwest executives possessed regarding the actual operating performance and financial condition of Qwest, including the quality, nature, source and growth of revenue, was material in that it was information that a reasonable investor would find important in making a decision to buy or sell Qwest securities. The defendant also knew that this information had been intentionally withheld from public disclosure. The defendant further knew that if the public learned of this information there would be a negative impact on Q's stock price.

- ix. Defendant ROBIN SZELIGA and other senior Qwest executives also made misleading statements about the quality, nature, growth, source and sustainability of its revenue, and failed to state facts that were necessary in order to make the statements made not misleading in light of the circumstances.
- x. Defendant ROBIN SZELIGA owned Qwest stock options.
- xi. On or about April 30, 2001, defendant ROBIN SZELIGA exercised 10,000 stock options and, sold 10,000 shares of Qwest stock at \$41/share. As a result of this transaction, the defendant made a pre-tax gain of \$125,000 (One Hundred Twenty Five Thousand and no/100 Dollars).
- xii. Defendant ROBIN SZELIGA sold her Qwest stock on the basis of what she knew to be material, non-public information regarding Qwest's true, complete and accurate operating performance and financial condition.

**4. SENTENCING COMPUTATION**

- a. The parties stipulate that sentencing in this case will be advised by application of the United States Sentencing Guidelines that went into effect on November 1, 2000, issued pursuant to 28 U.S.C. § 994(a), as well as the sentencing factors listed in 18 U.S.C. § 3553(a), but that the statutory maximum for the offense is ten (10) years imprisonment.
- b. The parties understand that the Court is not bound by the terms of this agreement, nor any stipulations contained herein, but instead maintains sole discretion in the sentencing determination and may impose any sentence, up to the statutory

maximum, regardless of any guideline range computed herein. The Court is free, however, pursuant to U.S.S.G. §§ 6A1.3 and 6B1.4, to reach its own findings of facts and sentencing factors after considering the parties' stipulations, the presentence investigation, and any other relevant information. (U.S.S.G. § 6B1.4 Comm.; U.S.S.G. § 1B1.4)

- c. The following sets forth the Guideline calculations agreed to by the parties:
- i. The applicable sentencing guideline is U.S.S.G. § 2F1.2.
  - ii. The base offense level is 8 (U.S.S.G. § 2F1.2).
  - iii. The amount of gain is more than \$120,000 and less than \$200,000, resulting in a 7 level increase (U.S.S.G. §§ 2F1.1[b][1][H] and 2F1.2[b][1]).
  - iv. The offense involved abuse of position of trust, resulting in a 2 level increase (U.S.S.G. § 3B1.3).
  - v. The defendant should receive neither an aggravating nor mitigating role in the offense adjustment (U.S.S.G. §§ 3B1.1 and 3B1.2).
  - vi. Based upon the foregoing, defendant ROBIN SZELIGA's adjusted offense level is 17.
  - vii. In addition, by demonstrating acceptance of responsibility for her offense, the defendant should receive the three (3) point downward adjustment pursuant to U.S.S.G. § 3E1.1(b). Acceptance of responsibility under the terms of this agreement includes that the defendant provide truthful, complete and accurate financial information to the Government, probation, and the Court.



- viii. The resulting offense level after all adjustments is 14.
- ix. The parties understand that the defendant's criminal history computation is tentative and is ultimately determined by the Court. At the time of the entering of this plea, the known facts are that defendant ROBIN SZELIGA has no criminal history. Accordingly, if no other information is discovered, the defendant's criminal history category would be I.
- x. The advisory guideline range resulting from an offense level of 14 and criminal history category (I) is 15 - 21 months. If the defendant complies with all terms and conditions of this plea agreement, the Government will recommend a sentence at the low end of the applicable range.
- xi. Defendant Robin Szeliga agrees to pay \$125,000.00 as restitution, representing the full amount of her pre-tax gain resulting from the offense herein. The parties agree that restitution is the amount set forth above. At the time of sentencing, the Government will agree that the distribution of the restitution may be administered by an SEC-related victims' fund.
- xii. Defendant ROBIN SZELIGA understands and agrees that the Court could impose a term of supervised release of at least two (2) years, but not more than three (3), years pursuant to guideline U.S.S.G. § 5D1.2.
- xiii. Finally, if the Government determines, in its sole discretion, that defendant ROBIN SZELIGA has fulfilled the terms and conditions of her agreement to cooperate and provided substantial assistance, as set forth in paragraph 5 below, the Government will make a motion pursuant to U.S.S.G. § 5K1.1 of the sentencing guidelines.

5. **COOPERATION AND SUBSTANTIAL ASSISTANCE**

- a. The defendant agrees that she shall cooperate fully with the Government by providing truthful, candid and complete information as to all matters within her knowledge concerning her wrongful conduct, as well as any wrongful conduct involving or by others. The defendant understands that such cooperation will include:
- (1) answering all questions and inquiries truthfully, accurately and fully, and without any purpose of evasion or misrepresentation;
  - (2) attending all meetings and debriefings at which the Government requests her presence, and at which she may have her counsel;
  - (3) providing any document, record or other evidence concerning matters reasonably related to the investigation in this case;
  - (4) testifying truthfully and completely before any grand jury and/or at any trial, hearing or other court proceeding(s) if requested to do so by the Government;
  - (5) advising the Government of all crimes which she has committed, and all administrative, civil, or criminal proceedings, investigations, or prosecutions in which she has been or is a subject, target, party, or witness;
  - (6) neither falsely incriminating nor exculpating any other person, nor untruthfully minimizing or enhancing any other individuals' role or conduct;
  - (7) consenting to adjournments of her sentencing requested by the Government for up to twelve (12) months from the date she enters her

plea.

- b. The Government reserves the right to evaluate the nature and extent of the defendant's cooperation and to make the defendant's cooperation, or lack thereof, known to the Court prior to the time of sentencing. If in the Government's judgment the defendant's cooperation is of such quality and significance to the investigation or prosecution of other criminal matters as to constitute substantial assistance warranting a downward departure from the calculated sentence, the Government will make a motion pursuant to U.S.S.G. § 5K1.1. In so doing, the Government will advise the Court that the defendant has provided substantial assistance, and recommend an appropriate and justified downward departure, including, if appropriate, a departure sufficient to bring the offense level into Zone A of the Guidelines.
- c. Defendant ROBIN SZELIGA acknowledges, understands and agrees that if the Government does make a U.S.S.G. § 5K1.1 motion and recommendation, the Government neither guarantees nor precludes any particular departure recommendation, other than that provided for in paragraph 5(b), *supra*.
- d. Defendant ROBIN SZELIGA acknowledges and agrees that nothing other than that set forth in this Agreement may be construed to require the Government to file a U.S.S.G. § 5K1.1 motion. However, if in the Government's judgment and discretion the defendant does, in fact, render substantial assistance, provide the foregoing cooperation, and comply with the terms and conditions of that cooperation as set forth herein, the Government will make a U.S.S.G. § 5K1.1 motion.

- e. Defendant ROBIN SZELIGA understands that the Government's determination as to whether to file a U.S.S.G. § 5K1.1 motion does not rest upon the result of any trial or other disposition in which she provides testimony or other information. Instead, whether to make such a motion depends solely upon Ms. Szeliga's compliance with the terms set forth herein, including whether she provided "substantial assistance," regardless of any particular outcome.
- f. Defendant ROBIN SZELIGA understands and acknowledges that the Court is under no obligation to grant a Government motion made pursuant to U.S.S.G. § 5K1.1 of the sentencing guidelines, nor is the Court obligated, if it does grant such a motion, to agree with the Government's departure recommendation. Indeed, if the Court grants such a motion, the Court has the sole authority to determine the level of departure, regardless of any recommendation the Government makes, or any request the defendant makes.
- g. The Government agrees that, except as provided in paragraph 10, no truthful statements made by the defendant during the course of her cooperation will be used against her in any criminal proceedings instituted by the Government.
- h. Under the terms of this agreement, defendant ROBIN SZELIGA may, if she chooses, file a motion pursuant to U.S.S.G. § 5K2.0 of the sentencing guidelines and/or any motion consistent with *United States v. Booker*.

6. **WHY THE PROPOSED PLEA DISPOSITION IS APPROPRIATE**

The parties believe that the plea agreement is appropriate because it reflects the seriousness of the offense and the defendant's role in it. By agreeing to the terms and conditions herein, defendant ROBIN SZELIGA is timely acknowledging and accepting responsibility for her

criminal conduct, and is willing to assist the Government in its investigation(s) and prosecution(s) of others, consistent with the terms and conditions set forth in paragraph 5 herein.

**7. AGREEMENT NOT BINDING ON THE COURT**

Defendant ROBIN SZELIGA acknowledges, understands and agrees that nothing in this Agreement is binding on the Court, and that the Court has the full and final authority to determine and impose the ultimate sentence, consistent with the sentencing guidelines and the factors listed in 18 U.S.C. § 3553(a). The defendant acknowledges, understands and agrees that the sentence will be advised by the sentencing guidelines, the factors listed in 18 U.S.C. § 3553(a), and the statutory maximum (including potentially those provisions which permit a departure, if warranted), which will be determined by the Court.

**8. FINANCIAL ARRANGEMENTS**

The defendant agrees that prior to or at the time of the sentencing, she will deliver to the Clerk's Office, United States District Court, a certified check in the amount of \$100.00, to cover the special assessment, as required in 18 U.S.C. § 3013. The defendant also agrees to provide a full and complete accounting of all assets, real or tangible, held by her or in any other name for her benefit, and, to that end, to submit a standard Form 500 (Financial Statement of Debtor).

**9. NO ADDITIONAL CHARGES**

The Government agrees that, if the Court accepts the plea and the sentence is imposed, it will not bring any additional criminal charges against the defendant based upon any conduct related to her employment at Qwest.

**10. BREACH OF AGREEMENT**

Should the Government determine in good faith during the pendency of this criminal proceeding that the defendant has failed to comply with any of the provisions of this plea

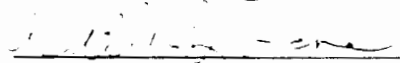
agreement, made false or misleading statements before the Court, committed any further crimes, or attempted to withdraw the plea, the Government may seek a judicial finding that such conduct is a breach of this plea agreement. To obtain a judicial finding that the defendant is in breach of this agreement, the Government will file a motion in this criminal case requesting that the Court determine whether the alleged breach occurred. The Government will have the burden of proving the alleged breach by a preponderance of the evidence. In the event of a judicial finding of breach, (a) the defendant will not be released from her guilty plea; (b) the Government will be free from its obligations under the agreement and further may take whatever position it believes appropriate as to the sentence and the conditions of the defendant's release; (c) the defendant shall be fully subject to criminal prosecution for any other crimes which she has or may have committed while employed at Qwest; and (d) the Government will be free to use against the defendant, directly and indirectly, in any criminal or civil proceeding, any of the statements, information or materials provided by her pursuant to this agreement.

**11. PAYMENT OF RESTITUTION**

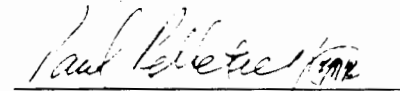
Defendant ROBIN SZELIGA agrees that she will deposit the restitution amount of One Hundred Twenty Five Thousand and no/100 Dollars (\$125,000.00) with the Court at the time she enters the plea, where it will remain until the time of sentencing when the Government will agree that the distribution of that money may be administered by an SEC-related victims' fund, as set forth in paragraph 4(c)(xi). The defendant further agrees that she will not seek to recover that money, at any time, through any proceeding pursuant to the United States Bankruptcy Code.

12. ENTIRE AGREEMENT

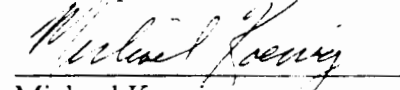
This document states the parties' entire agreement. There are no other promises, terms, conditions, understandings or assurances.



William Leone  
Acting United States Attorney  
District of Colorado




Paul Pelletier  
Acting Deputy Chief, Fraud Section  
U.S. Department of Justice



Michael Koenig  
Trial Attorney, Fraud Section  
U.S. Department of Justice


Date: 6/2/05

Date: 6-2-05



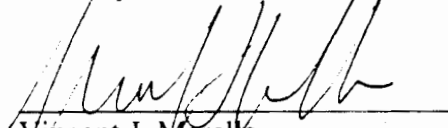
ROBIN SZELIGA, Defendant

Date: 6-2-05



Terry W. Bird  
Attorney for Defendant ROBIN SZELIGA

Date: 6-2-05



Vincent J. Marella  
Attorney for Defendant ROBIN SZELIGA